

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
UNIVERSAL ACCESS, INC.)
For Approval to Transfer)
Control to CityNet)
Telecommunications, Inc. and to)
Issue Evidence of Indebtedness.)
_____)

DOCKET NO. 03-0097

DECISION AND ORDER NO. 20209

Filed May 29, 2003
At 11:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2003 MAY 29 P 4:18

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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DECISION AND ORDER

I.

By petition filed on April 21, 2003, UNIVERSAL ACCESS, INC. (Petitioner or Universal Access) requests commission approval for the following proposed financial transactions: (1) CITYNET TELECOMMUNICATIONS, INC. (CityNet) acquiring the majority stock ownership of UNIVERSAL ACCESS GLOBAL HOLDINGS INC. (UAXS), the holding company and corporate parent of Universal Access; and (2) Universal Access pledging its assets and serving as a guarantor of a related financing arrangement. Petitioner makes its request pursuant to Hawaii Revised Statutes (HRS) § 269-19.

Copies of the application were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY (Consumer Advocate). On May 5, 2003, the Consumer Advocate filed its position statement, indicating that it does not object to the approval of the proposed financial transactions, described above and in more detail below.

II.

A.

Universal Access is a Delaware corporation authorized to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State of Hawaii (State).¹ Universal Access is a wholly-owned subsidiary of UAXS, a publicly-traded Delaware corporation with principal offices in Chicago, Illinois. CityNet is a privately-held Delaware corporation headquartered in Silver Spring, Maryland.²

B.

1.

The first proposed financial transaction involves an indirect transfer of control of Universal Access to CityNet (transfer of control) through CityNet's acquisition of the majority stock ownership of UAXS. Specifically, CityNet intends to acquire 55 per cent ownership interest in UAXS by purchasing UAXS' outstanding common stock on a fully-diluted basis. Petitioner represents, among other things, that: (1) The transfer of control will neither result in a change in name under which Universal Access currently operates nor a change in the manner in which Universal Access currently offers service in the State;

¹By Decision and Order No. 17706, filed on May 3, 2000, in Docket No. 00-0038, Universal Access was granted a certificate of authority to operate as a facilities-based carrier and reseller of intrastate telecommunications services in the State.

²Since commencing operations in 2000, CityNet was granted the right to build dark fiber networks and point-to-point dark fiber connections in the United States and Europe.

(2) Immediately subsequent to the transfer of control, Universal Access will continue to offer the services it currently offers with no change in the rates, terms, or conditions of service; and (3) The transfer of control to CityNet will be transparent to Universal Access' consumers in the State.

2.

In a separate but related proposed financial transaction, Universal Access will pledge its assets and serve as a guarantor of a proposed financing arrangement. In particular, UAXS and certain of its subsidiaries, including Universal Access, have entered into agreements with CityNet in which CityNet will be investing \$5 million in UAXS in exchange for a promissory note (Note) from Universal Access, UAXS, and other UAXS subsidiaries. In relation to the Note, Universal, UAXS, and other UAXS subsidiaries intend to grant perfected, first priority security interest in their respective assets to CityNet. In addition, UAXS and certain of its subsidiaries, including Universal Access, also will serve as guarantors to secure UAXS' and its subsidiaries' obligations under the agreements, discussed above. Petitioner represents that the proceeds from this proposed transaction are to be used to assist Universal Access's business operations and provide Universal Access with access to CityNet's business and managerial expertise. Similar to the transfer of control transaction, Petitioner represents that the proposed financing arrangement, described above, will not involve a modification to Universal Access'

management, rates, terms or conditions of service to consumers in the State, and will be seamless and transparent to these consumers.

III.

HRS § 269-17 requires a public utility corporation to obtain our consent prior to issuing evidence of indebtedness having a maturity exceeding 12 months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to Petitioner's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. We may approve the issuance of debt obligations if we find that such an issuance will not have a material adverse effect on Petitioner's public utility operations.³

HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, Hawaii Administrative Rules (HAR) § 6-80-135 permits us to grant an exemption from or waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that an exemption or waiver is in the public interest.

³HRS § 269-19 also requires a public utility corporation to obtain our consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. In addition, HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations."

Upon review of the record in this docket, particularly Petitioner's representations, we find the following: (1) that much of the telecommunication services currently provided by Petitioner are competitive; (2) that Applicant is a non-dominant carrier; (3) that although the proceeds from the proposed financial transactions, described above, may be used for purposes not permitted by statute, the proposed financial transactions will have little, if any, effect on Petitioner's consumers in Hawaii; (4) that the proposed financial transactions, described above, will not have a material adverse effect on Petitioner's public utility operations; (5) that any adverse effects, if any, from the proposed financial transactions, will likely impact its shareholders rather than its consumers or its public utility operations; and (6) that the proposed financial transactions are consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁴ Similarly, based on, among other things, Petitioner's representations, we also find that it is in the public interest to waive the applicability of HAR §§ 6-61-101 and 6-61-105

⁴At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a), or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

in this petition. Accordingly, we conclude that the requirements of HAR §§ 6-61-101 and 6-61-105 that are not satisfied by the information provided in Petitioner's petition should also be waived.⁵

IV.

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the proposed financial transactions described in the instant petition, filed on April 21, 2003.

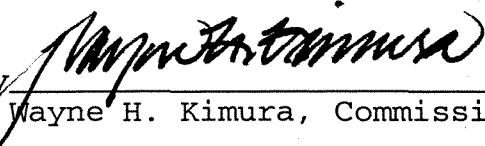
2. To the extent that the petition does not contain all of the information required under either HAR §§ 6-61-101 or 6-61-105, the applicability of those sections is waived.

⁵We note that the petition failed to comply with the requirements set forth in HAR §§ 6-61-101 and 6-61-105 by not submitting, among other things, a copy of the applicable financial statements, agreements and promissory notes.

DONE at Honolulu, Hawaii this 29th day of May, 2003.

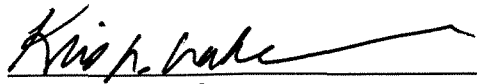
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

03-0097.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20209 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: May 29, 2003